

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
)
SPRINT COMMUNICATIONS COMPANY L.P.,)
SPRINT PAYPHONE SERVICES, INC., and)
ASC TELECOM, INC.)
)
For Authorization of the Acquisition)
of Nextel Partners, Inc. by Nextel)
WIP Corp.)
_____)

DOCKET NO. 2006-0052

DECISION AND ORDER NO. 22466

Filed May 15, 2006
At 1:30 o'clock P.M.

Karen Higashi
Chief Clerk of the Commission

ATTEST: A True Copy
KAREN HIGASHI
Chief Clerk, Public Utilities
Commission, State of Hawaii.

K. Higashi

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COMMISSION
HAWAII

OF THE STATE OF HAWAII

SPRINT COMMUNICATIONS COMPANY L.P.,)
SPRINT PAYPHONE SERVICES, INC., and)
ASC TELECOM, INC.)

Decision and Order No.

DECISION AND ORDER

the proposed acquisition of stock of NEXTEL PARTNERS, INC.

("Nextel Partners") by NEXTEL WIP CORP. ("Nextel WIP"), a

wholly owned subsidiary of SPRINT NEXTEL CORPORATION fka

SPRINT CORPORATION ("Sprint Nextel"), under Hawaii Revised

Statutes ("HRS") §§ 269-7(a) and 269-19, subject to the condition

that Applicants are required to notify the commission and the

DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND

CONSUMER AFFAIRS ("Consumer Advocate") in writing of the date

when the proposed acquisition is consummated.

I.

Background

A.

Description of Subject Entities

Applicants SPRINT COMMUNICATIONS COMPANY L.P.

("Sprint Communications"), SPRINT PAYPHONE SERVICES, INC.

("Sprint Payphone"), and ASC TELECOM, INC. ("ASC") (collectively, "Applicants") are wholly owned subsidiaries of Sprint Nextel, either directly or through other subsidiaries of Sprint Nextel, and are authorized to provide various telecommunications services in Hawaii.¹

Sprint Communications is a Delaware limited partnership that is wholly owned by subsidiaries of Sprint Nextel. Sprint Communications is certificated to provide the full range of intrastate telecommunications services in Hawaii (e.g., interexchange, local exchange, and intrastate toll services).² Sprint Communications is also the provider of telecommunications relay services or "TRS" in Hawaii.³

Sprint Payphone, a Florida corporation, is a wholly owned subsidiary of Sprint Nextel. Sprint Payphone holds a certificate to provide intrastate pay telephone services in Hawaii.⁴ Applicants represent that Sprint Payphone does not own

¹Sprint Nextel is the parent entity of Sprintcom, Inc., dba Sprint PCS ("Sprint PCS"). In addition, Nextel Partners is the parent entity of NPCR, Inc., dba Nextel Partners ("NPCR"). NPCR and Sprint PCS each hold a certificate of registration to operate as a commercial mobile radio service ("CMRS") provider in Hawaii. In Decision and Order No. 20890, filed on April 7, 2004, in Docket No. 03-0186, the commission waived approval of CMRS mergers or transfers of control. Accordingly, Sprint PCS and NPCR were not applicants to this proceeding.

²See Decision and Order No. 13262, filed on May 17, 1994, in Docket No. 94-0005; Decision and Order No. 14868, filed on August 9, 1996, in Docket No. 96-0061.

³See Decision and Order No. 20163, filed on April 30, 2003, in Docket No. 03-0058; Decision and Order No. 22438, filed on May 1, 2006, in Docket No. 03-0058.

⁴See Decision and Order No. 16108, filed on December 4, 1997, in Docket No. 97-0388.

facilities in the State and generates only a small amount of intrastate revenue in Hawaii.

ASC is a Kansas corporation and is an indirect, wholly owned Sprint Nextel subsidiary. ASC is certificated to provide interLATA and intraLATA telecommunications services in Hawaii as a "switchless" reseller.⁵ Like Sprint Payphone, Applicants represent that ASC does not own facilities in Hawaii and generates only a small amount of intrastate revenue in the State.

Sprint Nextel, the parent company of Applicants and Nextel WIP, was formed by means of a merger between Sprint Corporation and Nextel Communications, Inc. in a transaction that was approved by the commission by Decision and Order No. 21715, filed on April 4, 2005, in Docket No. 05-0045. Sprint Nextel is a publicly traded Kansas corporation with its corporate headquarters in Reston, Virginia, and its operational headquarters in Overland Park, Kansas. It is a global communications company that provides a range of wireless and wireline communications services to consumers, and business and government customers. According to Applicants, Sprint Nextel is the third largest provider of mobile telephony and related data services in the United States based on subscribership, with about 46 million subscribers.

Nextel Partners is a Delaware corporation and is headquartered in Kirkland, Washington. Nextel Partners is licensed by the Federal Communications Commission to provide CMRS in the 800 and 900 MHz bands. It presently provides digital

⁵See Decision and Order No. 14831, filed on August 1, 1996, in Docket No. 96-0090.

wireless communications services using its own Integrated Digital Enhanced Network or "iDEN®" technology under the Nextel band name in mid-sized, secondary and rural United States markets, including Hawaii. Sprint Nextel currently owns approximately 32% of Nextel Partners' outstanding common stock. As discussed further below, Sprint Nextel (through its subsidiary Nextel WIP) intends to purchase the remaining outstanding common stock of Nextel Partners, and thereby acquire full ownership of Nextel Partners.

B.

Application

On March 6, 2006, Applicants filed their Application seeking authorization for Sprint Nextel to acquire the remaining outstanding capital stock of Nextel Partners (the "Proposed Transaction").⁶ Applicants explain that, as a result of the merger between Sprint Corporation and Nextel Communications, Inc., the shareholders of Nextel Partners obtained the right to exercise certain "put rights" under Nextel Partners' Certificate of Incorporation. Specifically, Nextel Partners' shareholders had the right to require Sprint Nextel to purchase the shares of Nextel Partners that it did not already own. Nextel Partners' shareholders have voted to exercise the "put rights." Sprint Nextel currently owns 32% of Nextel Partners' outstanding capital stock. Accordingly, the Proposed Transaction contemplates that Sprint Nextel will purchase the remaining

⁶See Application, Verification, and Certificate of Service, filed on March 6, 2006 ("Application").

outstanding 68% of Nextel Partners common stock, thereby acquiring 100% ownership of Nextel Partners.

Applicants represent that the acquisition will be at the parent, holding company level only and that there will be no changes to the Sprint subsidiaries operating in Hawaii or to Nextel Partners' certificated entity in Hawaii, NPCR. According to Applicants, the certificates, authorizations and licenses currently held by the Applicants and by NPCR will continue to be held by the respective entities and the Proposed Transaction will not alter their relationship with the commission.

Applicants further represent that both Sprint Nextel and Nextel Partners have substantial financial resources,⁷ such that the Proposed Transaction will not adversely affect Applicants' fitness, willingness or ability to provide telecommunications services in Hawaii. In addition, Applicants maintain that the Proposed Transaction will benefit Sprint Nextel's wireline operations, since Sprint Nextel will be able to shift Nextel Partners' backhaul traffic to its own wireline network. Applicants also state that the transaction will not have any anti-competitive effects since none of the Applicants are classified as dominant carriers in Hawaii, and the existing competitive market for Applicants' services will continue to

⁷In support of this position, Applicants incorporated by reference their most recent year-end financial statements to satisfy the requirements of Hawaii Administrative Rules ("HAR") § 6-61-75, if deemed applicable. Applicants requested that, to the extent the Application is inconsistent with the other filing requirements of HAR Chapter 6-61, the commission waive those requirements pursuant to HRS § 269-16.9(e) and HAR § 6-80-135.

protect the public interest after the Proposed Transaction is consummated.

C.

Consumer Advocate's Statement of Position

On April 4, 2006, the Consumer Advocate filed its Statement of Position ("Statement of Position"), stating that it does not object to the commission's approval of the Proposed Transaction. The Consumer Advocate argued that both Sprint Nextel and Nextel Partners have substantial financial resources, expansive service networks, and large customer bases. As a result, the Consumer Advocate concluded that "both Sprint Nextel and Nextel Partners are fit, willing, and able to enter into the transaction and will be a solid, viable holding parent company for the Applicants in Hawaii."⁸ The Consumer Advocate also concurred with Applicants' assertion that the existing competitive market for Applicants' services will continue to protect the public interest after the Proposed Transaction is consummated.

II.

Discussion

HRS § 269-7(a) authorizes the commission to examine the condition of each public utility, its financial transactions, and "all matters of every nature affecting the relations and transactions between it and the public or persons or

⁸See Statement of Position, at 4.

corporations." Under HRS § 269-7(a), the commission will approve a proposed financial transaction if it is reasonable and consistent with the public interest.⁹ A transaction is reasonable and consistent with the public interest if, among other things, it will not adversely affect the carrier's fitness, willingness, and ability to provide intrastate telecommunications services in Hawaii, as authorized by the commission.¹⁰

In addition, HRS § 269-19 provides that no public utility corporation shall "directly or indirectly, merge or consolidate with any other public utility corporation without first having secured from the . . . commission an order authorizing it so to do." (Emphasis added.) HRS § 269-19 also states: "Every such sale, lease, assignment, mortgage, disposition, encumbrance, merger, or consolidation, made other than in accordance with the order of the commission shall be void."

Applicants have assured the commission, among other things, that the Proposed Transaction will be transparent and neutral for Applicants' wireline customers, including those customers in Hawaii; that it will not have any anti-competitive effects; and that the existing competitive market for Applicants' services will continue to protect the public interest after the

⁹See Decision and Order No. 21715, filed on April 4, 2005, in Docket No. 05-0045, at 11, and cases cited therein.

¹⁰See id. at 11-12.

Proposed Transaction is consummated.¹¹ Based on the foregoing, the commission finds that the Proposed Transaction is reasonable and in the public interest. Accordingly, the commission concludes that the Proposed Transaction should be approved, pursuant to HRS §§ 269-7(a) and 269-19,¹² subject to the condition that Applicant shall be required to provide the commission and the Consumer Advocate with written notice of the date when the Proposed Transaction is consummated.

III.

Orders

THE COMMISSION ORDERS:

1. The Proposed Transaction, as described in the Application, is approved, pursuant to HRS §§ 269-7(a) and 269-19, subject to the condition that Applicants notify the commission and the Consumer Advocate in writing of the date when the

¹¹The commission takes official notice, pursuant to HAR § 6-61-48, of all records relating to Applicants, Sprint Nextel, Nextel WIP, Nextel Partners, Sprint PCS, and NPCR.

¹²Notwithstanding HRS §§ 269-7(a) and 269-19, HRS § 269-16.9 permits the commission to waive regulatory requirements applicable to telecommunications providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule (except provisions of HRS § 269-34 or provisions of HAR chapter 6-80 that implement HRS § 269-34), upon a determination that a waiver is in the public interest. For the same reasons discussed in Decision and Order No. 21715, filed on April 4, 2005, in Docket No. 05-0045, the commission finds that the requirements of HRS §§ 269-7(a) and 269-19 should not be waived in this case. Nevertheless, the commission approves the Proposed Transaction, for the reasons discussed above, and waives the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent the Application fails to meet any of the filing requirements set forth therein.

Proposed Transaction is consummated. Applicants shall promptly comply with the foregoing condition; failure to promptly comply may constitute cause to void this decision and order, and may result in further regulatory action, as authorized by law.

2. The provisions of HAR §§ 6-61-101 and 6-61-105 are waived, to the extent the Application fails to meet any of the filing requirements set forth therein.

DONE at Honolulu, Hawaii MAY 15 2006.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By (EXCUSED)
Wayne H. Kimura, Commissioner

By Janet E. Kawelo
Janet E. Kawelo, Commissioner

APPROVED AS TO FORM:

Kaiulani E.S. Kidani
Kaiulani E.S. Kidani
Commission Counsel

2006-0052.eh

CERTIFICATE OF SERVICE

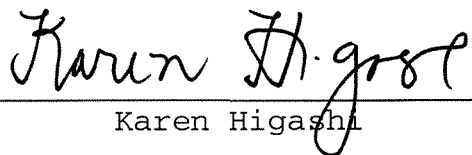
I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 22466 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

JOHN E. COLE
EXECUTIVE DIRECTOR
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Karen Higashi

DATED: MAY 15 2006